

file

**BEFORE THE
STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS**

Application of Oconto County for a Permit)	
to Permanently Raise the Water Levels of)	Case No. 3-LM-95-529
Anderson Lake, Town of Armstrong, Oconto)	
County, Wisconsin)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Oconto County applied to the Department of Natural Resources for a permit to raise the water levels of Anderson Lake. The Department of Natural Resources issued a Notice of Proposed DNR Permit which stated that unless written objection was made within thirty days after publication, the Department might issue a decision on the permit without a hearing. The Department received several timely objections to the permit.

On April 23, 1996, the Department forwarded the file to the Division of Hearings and Appeals for hearing. Pursuant to due notice, a hearing was held on June 6, 1996, in Green Bay, Wisconsin, Mark J. Kaiser, Administrative Law Judge, presiding.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Oconto County Forest Land Park Committee, by

Louis Winkler, Chairman
12923 County Trunk Highway "H"
Gillett, Wisconsin 54124

Wisconsin Department of Natural Resources, by

Attorney Judith M. Ohm
101 South Webster Street
Madison, Wisconsin 53703

FINDINGS OF FACT

1. Oconto County is the owner of a dam constructed on Wesco Creek, the outlet stream of Anderson Lake. The dam is located in the SE 1/4 of the SE 1/4 of Section 31, Township 31 North, Range 17 East, Oconto County, Wisconsin. The dam was completed in 1938. On January 6, 1939, the Wisconsin Public Service Commission (PSC) issued an order setting the level of Anderson Lake at 855.67 feet, PSC datum, referenced to a bronze cap benchmark in the top on the left wing wall of the dam.

2. Anderson Lake is a drainage lake, approximately 180 acres in size. Approximately 65% of the shoreline is developed. The remaining 35% of the shoreline is a wetlands complex.

3. By letter dated August 3, 1995, Oconto County (applicant) applied for a permit pursuant to sec. 31.02, Stats., to raise the water level of Anderson Lake to 856.33 feet, PSC datum, an increase of approximately eight inches. The application was filed at the request of property owners on Anderson Lake. The Department of Natural Resources (Department) and the applicant have complied with the requirements of sec. 31.06, Stats.

4. In the past an employee of Oconto County had been responsible for operating the stop-logs on the dam. At some point the water level of Anderson Lake was allowed to rise above the level authorized by the PSC during the summer months. The employee would remove the stop-logs in the fall for a winter draw down and reinsert them in the spring. This employee retired and after his retirement no one operated the stop-log on the dam. The water level was not drawn down during the winter and in 1994 and 1995 the Department received complaints from property owners regarding erosion and shoreline damage from ice heaving.

5. It is believed that the higher water level enhances recreational, primarily boating, use of Anderson Lake. Additionally, during the time period the water level was kept higher, some property owners constructed piers based on the higher lake level. If the lake level is maintained at the level authorized in the PSC order those piers would have to be extended.

6. The proposed raising of the water level will have a minimal, if any, impact on wildlife and fishery values on Anderson Lake. The proposed raising of the water level will increase shoreline erosion in some parts of Anderson Lake. In summer the erosion will be caused by increased wave action resulting from boat and jet ski traffic. In winter erosion and other shoreline damage will result from ice heaving.

7. Many of the property owners on Anderson Lake have constructed some type of shoreline protection on their property, either rip-rap or a sea wall. The shoreline protection minimizes the erosion resulting from wave action. The erosion and shoreline damage resulting from ice heaving is more substantial. The damage from ice heaving can best be minimized by a winter draw down.

8. If the conditions set forth in following order are complied with, the proposed raising of the water level will not adversely impact public rights or public interest in Anderson Lake.

9. If the conditions set forth in following order are complied with, the proposed raising of the water level will not adversely impact private property owners on Anderson Lake and will not be detrimental to life, health or property.

10. If the conditions set forth in following order are complied with, the proposed raising of the water level will not adversely affect water quality, nor will it cause environmental pollution in Anderson Lake as defined in sec. 144.01(3), Stats.

CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals, by its Administrative Law Judge, has the authority under secs. 31.02 and 227.43, Stats., and the foregoing Findings of Fact to authorize the levels requested, subject to the conditions in the following order.

2. The Department has complied with the requirements of sec. 1.11, Stats.

3. The proposed raising of the water level of Anderson Lake is a type IV action pursuant to sec. NR 150.03(8)(f)8, Wis. Adm. Code. Type IV actions do not require the preparation of an environmental impact statement or assessment.

ORDER

IT IS THEREFORE ORDERED, that:

The dam at the Wesco Creek outlet shall be operated to maintain a maximum water level of Anderson Lake at 856.33 feet, PSC datum, for the period from April 15 through October 1 each year. No later than October 1 of each year the permittee shall cause all stop-logs in the dam to be pulled for a winter draw down to 855.67 feet, PSC datum. The stop logs may be reinserted after April 15 of the following year. The permittee, Oconto County,

shall be responsible for operating the stop-logs of the dam to ensure the water level does not rise above the authorized level from April 15 through October 1 and to effectuate the winter draw down.

Dated at Madison, Wisconsin on July 8, 1996.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By Mark Kaiser
MARK J. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.